



## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

[Docket No. NRCS–2020–0009]

#### Final Guidance for Identification of Nonindustrial Private Forest Land (NIPF)

**AGENCY:** Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

**ACTION:** Notice.

**SUMMARY:** On December 17, 2020, NRCS published a notice of proposed guidance for NIPF identification and provided a 30-day public comment period for input. NRCS received 139 comments from different members of the public, including Indian Tribes, State agencies, non-governmental organizations, and individuals. Several of these comments provided coordinated input from many organizations, including one letter that provided input from over 60 organizations. This document responds to comments received during the public comment period, which closed on January 19, 2021, and, for the reasons stated in this document, identifies that NRCS will not adopt the guidance it proposed in its December 2020 notice.

**APPLICABLE DATE:** [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Martha Joseph, telephone: (814) 203-5562; email: [martha.joseph@usda.gov](mailto:martha.joseph@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

NRCS is one of the USDA agencies that identifies NIPF for program enrollment. In particular, NRCS identifies NIPF for enrollment in the Agricultural Conservation Easement Program (ACEP), the Conservation Stewardship Program (CSP), the

Environmental Quality Incentives Program (EQIP), and the Regional Conservation Partnership Program (RCPP).

Identification for NIPF enrollment under these NRCS programs is based on section 1201(a)(18) of the Food Security Act of 1985 (the 1985 Farm Bill) (16 U.S.C. 3801), which defines NIPF as rural land, as determined by the Secretary, that:

- Has existing tree cover or is suitable for growing trees; and
- Is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Since the NIPF definition was first established several decades ago, changes have occurred in the forestry industry. In particular, foresters would identify the “industrial” status of a parcel of land by whether or not a company was vertically integrated (for example, the landowner owned both forestland and primary wood processing facilities). However, the ability to distinguish whether a particular parcel of land is industrial or nonindustrial became complicated when companies started to divest either their land or mills at the turn of the 21<sup>st</sup> century and timber investment management organizations (TIMOs) and real estate investment trusts (REITs) reflected an increasing amount of industrial forest land ownership.

To address these changes in the forestry industry, NRCS described in its December 2020 notice, proposed guidance that would be used to identify NIPF as defined by the 1985 Farm Bill and NRCS program regulations. NRCS was not re-defining NIPF but was providing guidelines for helping its staff identify the various components of the statutory definition. Referencing criteria used by other conservation agencies (the USDA Forest Service and Farm Service Agency), NRCS proposed to clarify how to identify a nonindustrial private landowner if they:

- (1)(i) Own fewer than 45,000 acres of forest land in the United States; and
- (ii) Do not own or operate an industrial mill for the primary processing of raw wood products as determined by NRCS in consultation with the State Technical Committee; or
- (2) Meet criteria established for a nonindustrial private landowner by NRCS in a State in consultation with the State Technical Committee.

NRCS received a total of 91 letters or e-mails containing 139 comments. The comments were from forestry or agricultural stakeholders, conservation organizations, individuals, Tribal entities, other organizations, and governmental agencies. One of the letters was signed by over 60 organizations. NRCS review of the comments revealed a clear stakeholder preference that NRCS continue to use the existing programmatic framework until Congress can address how the changes in the forestry industry should affect eligibility for certain NRCS programs.

### **Comment Topics**

This document summarizes the comments and explains the NRCS decision not to adopt revised NIPF technical guidance at this time. The comments are organized alphabetically by topic. The topics include: Adjusted Gross Income (AGI) limitation, funding, general criticism or support, landscape-level conservation benefits, large NIPF holdings, and mill ownership.

### **AGI**

*Comment:* NRCS should use the AGI limits instead of the proposed NIPF criteria. One comment also requested that NIPF be removed from AGI regulations.

*Response:* Prior to the Agriculture Improvement Act of 2018 (the 2018 Farm Bill), the AGI payment eligibility provisions indirectly assisted identification of non-industrial forestry landowners by excluding more affluent corporate landowners from being eligible for conservation payments. Additionally, under the Agricultural Act of

2014 (the 2014 Farm Bill), participants in RCPP, through the Healthy Forests Reserve Program (HFRP), were not subject to the NIPF land eligibility restriction or the AGI limitation.

However, the 2018 Farm Bill codified RCPP as a stand-alone program and limited forest land eligibility to NIPF, necessitating criteria to identify individual industrial landowners. The availability of the general AGI waiver and the more program-specific AGI waiver has the potential to allow more affluent corporate owners to participate.

NRCS has decided that it would be more appropriate to rely, in part, upon the AGI limitation and waiver criteria<sup>1</sup> to make NIPF eligibility determinations so that forestry operations continue to be treated similarly to agricultural operations.

### **Funding**

*Comment:* Protecting forests, especially in the drought-plagued West, is essential for survival of the ecosystem, and as such should receive greater funding.

*Response:* NRCS appreciates the expressions of support for protecting forests.

### **General Criticism**

*Comment:* Several comments expressed a general dissatisfaction with any proposed changes to the definition. Some comments suggested NRCS wait until the next Farm Bill to implement any change, which would allow Congress to provide greater guidance. Others suggested that any change must be vetted by the Joint Forestry Team (JFT), which is a multilateral partnership including public and private entities. Several comments expressed confusion over the proposed guidance, arguing that the guidance is unnecessary. One comment simply stated that large forests are important, implying that the acreage cap presents an undue impediment.

---

<sup>1</sup>See 7 CFR 1400.500(f) for the waiver criteria.

*Response:* NRCS believes that technical guidance such as that proposed in its December 17, 2020, notice would be helpful to distinguish industrial from nonindustrial land holdings. As described in the original notice, forestry industry changes resulted in many industrial landholdings divesting themselves from their mill facilities, though the industrial production methods on such lands remained. NRCS believes that the development of technical guidance will have greater receptivity in the conservation community with more specific Congressional guidance about where resources should be focused in light of these forest industry changes.

NRCS considers the JFT a valuable resource for receiving input with respect to forestry issues, and the public comment period provided JFT member organizations an opportunity to provide input to the guidance. Additionally, NRCS understands the sentiment to receive additional input from Congress, and therefore, NRCS is not going to adopt revised technical guidance at this time.

### **General Support**

*Comment:* Some comments expressed general support for NRCS activities that promote forest conservation. Others specifically supported aspects of the NIPF definition. Some expressed support for the acreage limit or the mill criterion, while others lauded either the narrowness or breadth of who may qualify as an NIPF landowner. Several expressed appreciation for the involvement of State technical committees.

*Response:* NRCS appreciates the general support it received from producers and partners with respect to the proposed NIPF guidelines.

### **Landscape Level Conservation Benefits**

*Comment:* Some expressed that the guidance specifying a 45,000-acre threshold would exclude important conservation lands as well as pathways for wildlife migration. Some comments recommend allowing large landowners to participate in landscape-level conservation efforts to effectively address resource concerns and reduce implementation

costs for individual landowners. One comment approved excluding corporate landowners and recommended using the American Tree Farm Program private forest landowner definition.

*Response:* NRCS recognizes that large, contiguous tracts provide significant conservation benefits, including providing pathways for wildlife migration. Congress specified that Farm Bill funding should be targeted to nonindustrial forestry landowners, but whether large tracts of forest land provide conservation benefits is a separate consideration. NRCS believes that it can still obtain significant conservation benefits through enrollment of contiguous small tracts and by coordinating with partners who can contribute more of their resources to protecting large tracts that may not meet AGI eligibility or AGI waiver requirements.

### **Large NIPF Holdings**

*Comment:* Comments related to the acreage criterion threshold of 45,000 acres came from a range of commenters. One of the comments was signed by approximately 61 different forestry or conservation stakeholders.

Additional comments were specific to the applicability of the threshold with respect to Tribal land, especially land owned by Alaska Native Corporations (ANCs). The comments received from Tribal entities such as ANCs expressed concern that the acreage limitation did not consider the sovereign nature of Tribal landholdings or that ANCs often have very large acreages that would be excluded from NRCS assistance.

Many of the comments opposed the acreage criterion, stating that the acreage limitation was arbitrary, that such a limitation does not exist in statute, and that imposition of the acreage threshold would eliminate valuable conservation opportunities. Several of these comments identified that it was an error to equate large commercial land holdings with the term “industrial” since much of this land must be subject to stewardship

requirements. These commenters also expressed the view that it was a mistake to equate commercial thinning and logging activities with the term “industrial.”

However, NRCS also received many comments expressing support for the 45,000-acre threshold, but criticism that this threshold was too large for someone to identify themselves as non-industrial, and recommendations instead for a 10,000 or lower acreage threshold. Several of these comments expressed concern that landowners with large acreages would outcompete and divert limited conservation dollars from smaller forestry operations that needed the financial assistance. Other comments expressed strong support for the acreage criterion because they believe TIMOs or REITs with large acreage should be ineligible for conservation assistance. Several comments identified that State-level assistance to family forestry operations have a far lower acreage threshold of less than a few hundred acres.

*Response:* NRCS considered several options in response to these comments. In particular, NRCS considered:

- 1) Making all forest land eligible;
- 2) Issuing the proposed guidance as final with no changes;
- 3) Relying completely on whether there is a mill on site to determine whether land is industrial;
- 4) Revising the guidance to identify exceptions to the mill and acreage criteria; or
- 5) Continuing to rely, in part, upon AGI and other payment eligibility requirements to act as a surrogate for identification of industrial land holdings.

NRCS rejected the first option as Congress specified that only NIPF lands were eligible for certain NRCS programs. NRCS also rejected reliance on the mill criterion alone as it failed to accommodate the last couple decades of development in the forestry

industry. Given the concerns regarding the establishment of the acreage criterion, NRCS believes that it should maintain its reliance upon the mill criterion in conjunction with the AGI limitation, AGI waiver criteria, and related payment attribution eligibility to help make NIPF eligibility determinations.

### **Mill Criterion**

*Comment:* NRCS received comments with respect to the mill criterion, including:

- Expressing concern about small portable mills and impact to family operations,
- Recommending that NRCS use output thresholds,
- Recommending removal of the mill criterion entirely,
- Supporting that the State Conservationist defines what constitutes a mill,
- Expressing concern about potential inconsistency across States; and
- Recommending AGI for the mill criterion.

*Response:* As identified in the large NIPF holdings discussion above, NRCS believes it should keep the mill criterion as it has long been used to assist with the identification of NIPF acreage. However, since there are small operations that have mills, and portable mills are used to assist with conservation activities (for example, wildfire management), NRCS wants to take this opportunity to clarify that the presence of these mills will not affect the parcel's eligibility as NIPF.

### **Current Technical Guidance**

In response to the comments summarized above, NRCS will not be issuing new technical guidance to identify NIPF for program eligibility purposes. In particular, NRCS will continue to identify forest land eligibility using the traditional NIPF identification criteria, such as the presence of an industrial mill, in conjunction with



payment eligibility criteria that address, in part, the changes in forest land ownership by large corporate entities.

Louis Aspey,  
Associate Chief,  
Natural Resources Conservation Service.

[FR Doc. 2022-11286 Filed: 5/25/2022 8:45 am; Publication Date: 5/26/2022]